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HOUSE BILL 967

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

DELORES C. WRIGHT

AN ACT

RELATING TO TAXATION; PROVIDING A DEDUCTION FROM GROSS RECEIPTS  
AND GOVERNMENTAL GROSS RECEIPTS FOR RECEIPTS FROM THE SALE OF  
HEALTH SERVICES, PRESCRIPTION DRUGS AND PROSTHETIC DEVICES;  
REPEALING THE INCOME TAX CREDIT FOR PRESCRIPTION DRUGS;  
AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-9-3 NMSA 1978 (being Laws 1978,  
Chapter 46, Section 1, as amended) is amended to read:

"7-9-3. DEFINITIONS. -- As used in the Gross Receipts and  
Compensating Tax Act:

A. "department" means the taxation and revenue  
department, the secretary of taxation and revenue or any  
employee of the department exercising authority lawfully  
delegated to that employee by the secretary;

B. "buying" or "selling" means any transfer of

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1 property for consideration or any performance of service for  
2 consideration;

3 C. "construction" means building, altering,  
4 repairing or demolishing in the ordinary course of business any:

5 (1) road, highway, bridge, parking area or  
6 related project;

7 (2) building, stadium or other structure;

8 (3) airport, subway or similar facility;

9 (4) park, trail, athletic field, golf course or  
10 similar facility;

11 (5) dam, reservoir, canal, ditch or similar  
12 facility;

13 (6) sewerage or water treatment facility, power  
14 generating plant, pump station, natural gas compressing station,  
15 gas processing plant, coal gasification plant, refinery,  
16 distillery or similar facility;

17 (7) sewerage, water, gas or other pipeline;

18 (8) transmission line;

19 (9) radio, television or other tower;

20 (10) water, oil or other storage tank;

21 (11) shaft, tunnel or other mining  
22 appurtenance;

23 (12) microwave station or similar facility; or

24 (13) similar work;

25 "construction" also means:

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1 (14) leveling or clearing land;

2 (15) excavating earth;

3 (16) drilling wells of any type, including  
4 seismograph shot holes or core drilling; or

5 (17) similar work;

6 D. "financial corporation" means any savings and  
7 loan association or any incorporated savings and loan company,  
8 trust company, mortgage banking company, consumer finance  
9 company or other financial corporation;

10 E. "engaging in business" means carrying on or  
11 causing to be carried on any activity with the purpose of direct  
12 or indirect benefit;

13 F. "gross receipts" means the total amount of money  
14 or the value of other consideration received from selling  
15 property in New Mexico, from leasing property employed in New  
16 Mexico, from selling services performed outside New Mexico the  
17 product of which is initially used in New Mexico or from  
18 performing services in New Mexico. In an exchange in which the  
19 money or other consideration received does not represent the  
20 value of the property or service exchanged, "gross receipts"  
21 means the reasonable value of the property or service exchanged.

22 (1) "Gross receipts" includes:

23 (a) any receipts from sales of tangible  
24 personal property handled on consignment;

25 (b) the total commissions or fees derived

1 from the business of buying, selling or promoting the purchase,  
2 sale or leasing, as an agent or broker on a commission or fee  
3 basis, of any property, service, stock, bond or security;

4 (c) amounts paid by members of any  
5 cooperative association or similar organization for sales or  
6 leases of personal property or performance of services by such  
7 organization; and

8 (d) amounts received from transmitting  
9 messages or conversations by persons providing telephone or  
10 telegraph services.

11 (2) "Gross receipts" excludes:

12 (a) cash discounts allowed and taken;

13 (b) New Mexico gross receipts tax,  
14 governmental gross receipts tax and leased vehicle gross  
15 receipts tax payable on transactions for the reporting period;

16 (c) taxes imposed pursuant to the  
17 provisions of any local option gross receipts tax that is  
18 payable on transactions for the reporting period;

19 (d) any gross receipts or sales taxes  
20 imposed by an Indian nation, tribe or pueblo provided that the  
21 tax is approved, if approval is required by federal law or  
22 regulation, by the secretary of the interior of the United  
23 States and provided further that the gross receipts or sales tax  
24 imposed by the Indian nation, tribe or pueblo provides a  
25 reciprocal exclusion for gross receipts, sales or gross

1 receipts-based excise taxes imposed by the state or its  
2 political subdivisions;

3 (e) any type of time-price differential;  
4 and

5 (f) amounts received solely on behalf of  
6 another in a disclosed agency capacity.

7 (3) When the sale of property or service is  
8 made under any type of charge, conditional or time-sales  
9 contract or the leasing of property is made under a leasing  
10 contract, the seller or lessor may elect to treat all receipts,  
11 excluding any type of time-price differential, under such  
12 contracts as gross receipts as and when the payments are  
13 actually received. If the seller or lessor transfers his  
14 interest in any such contract to a third person, the seller or  
15 lessor shall pay the gross receipts tax upon the full sale or  
16 leasing contract amount, excluding any type of time-price  
17 differential;

18 G. "manufacturing" means combining or processing  
19 components or materials to increase their value for sale in the  
20 ordinary course of business, but does not include construction;

21 H. "person" means:

22 (1) any individual, estate, trust, receiver,  
23 cooperative association, club, corporation, company, firm,  
24 partnership, limited liability company, limited liability  
25 partnership, joint venture, syndicate or other entity, including

1 any gas, water or electric utility owned or operated by a  
2 county, municipality or other political subdivision of the  
3 state; or

4 (2) any national, federal, state, Indian or  
5 other governmental unit or subdivision, or any agency,  
6 department or instrumentality of any of the foregoing;

7 I. "property" means real property, tangible personal  
8 property, licenses, franchises, patents, trademarks and  
9 copyrights. Tangible personal property includes electricity and  
10 manufactured homes;

11 J. "leasing" means any arrangement whereby, for a  
12 consideration, property is employed for or by any person other  
13 than the owner of the property, except that the granting of a  
14 license to use property is the sale of a license and not a  
15 lease;

16 K. "service" means all activities engaged in for  
17 other persons for a consideration, which activities involve  
18 predominantly the performance of a service as distinguished from  
19 selling or leasing property. "Service" includes activities  
20 performed by a person for its members or shareholders. In  
21 determining what is a service, the intended use, principal  
22 objective or ultimate objective of the contracting parties shall  
23 not be controlling. "Service" includes construction activities  
24 and all tangible personal property that will become an  
25 ingredient or component part of a construction project. Such

1 tangible personal property retains its character as tangible  
2 personal property until it is installed as an ingredient or  
3 component part of a construction project in New Mexico.

4 However, sales of tangible personal property that will become an  
5 ingredient or component part of a construction project to  
6 persons engaged in the construction business are sales of  
7 tangible personal property;

8 L. "use" or "using" includes use, consumption or  
9 storage other than storage for subsequent sale in the ordinary  
10 course of business or for use solely outside this state;

11 M "secretary" means the secretary of taxation and  
12 revenue or the secretary's delegate;

13 N. "manufactured home" means a moveable or portable  
14 housing structure for human occupancy that exceeds either a  
15 width of eight feet or a length of forty feet constructed to be  
16 towed on its own chassis and designed to be installed with or  
17 without a permanent foundation;

18 O. "initial use" or "initially used" means the first  
19 employment for the intended purpose and does not include the  
20 following activities:

21 (1) observation of tests conducted by the  
22 performer of services;

23 (2) participation in progress reviews,  
24 briefings, consultations and conferences conducted by the  
25 performer of services;

1 (3) review of preliminary drafts, drawings and  
2 other materials prepared by the performer of the services;

3 (4) inspection of preliminary prototypes  
4 developed by the performer of services; or

5 (5) similar activities;

6 P. "research and development services" means any  
7 activity engaged in for other persons for consideration, for one  
8 or more of the following purposes:

9 (1) advancing basic knowledge in a recognized  
10 field of natural science;

11 (2) advancing technology in a field of  
12 technical endeavor;

13 (3) the development of a new or improved  
14 product, process or system with new or improved function,  
15 performance, reliability or quality, whether or not the new or  
16 improved product, process or system is offered for sale, lease  
17 or other transfer;

18 (4) the development of new uses or applications  
19 for an existing product, process or system, whether or not the  
20 new use or application is offered as the rationale for purchase,  
21 lease or other transfer of the product, process or system;

22 (5) analytical or survey activities  
23 incorporating technology review, application, trade-off study,  
24 modeling, simulation, conceptual design or similar activities,  
25 whether or not offered for sale, lease or other transfer; or

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1 (6) the design and development of prototypes or  
2 the integration of systems incorporating advances, developments  
3 or improvements included in Paragraphs (1) through (5) of this  
4 subsection; [~~and~~]

5 Q. "local option gross receipts tax" means a tax  
6 authorized to be imposed by a county or municipality upon the  
7 taxpayer's gross receipts and required to be collected by the  
8 department at the same time and in the same manner as the gross  
9 receipts tax; "local option gross receipts tax" includes the  
10 taxes imposed pursuant to the Municipal Local Option Gross  
11 Receipts Taxes Act, Supplemental Municipal Gross Receipts Tax  
12 Act, Special Municipal Gross Receipts Tax Act, County Local  
13 Option Gross Receipts Taxes Act, Local Hospital Gross Receipts  
14 Tax Act, County Correctional Facility Gross Receipts Tax Act and  
15 such other acts as may be enacted authorizing counties or  
16 municipalities to impose taxes on gross receipts, which taxes  
17 are to be collected by the department;

18 R. "health service" means a service provided to a  
19 human being for the prevention, amelioration or cure of any  
20 traumatic, virulent or bacteriological disease, any injury or  
21 disfigurement to the human body, however inflicted, that  
22 requires professional attention, any degenerative disease of the  
23 human body or any serious mental disturbance, and which service  
24 is provided by:

25 (1) a licensed practitioner if the service is

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1 within the scope of the practitioner's profession as defined by  
2 law; or

3 (2) a facility licensed by the department of  
4 health as a hospital, nursing facility, clinic or health  
5 facility of other similar designation;

6 S. "licensed practitioner" means a chiropractor,  
7 dentist, dental assistant, dental hygienist, medical doctor,  
8 osteopath, optometrist, physician assistant, podiatrist,  
9 practical nurse, professional nurse or psychologist who is  
10 licensed or certified under state law to practice in the state;

11 T. "prescription drugs" means insulin and substances  
12 that are:

13 (1) dispensed by or under the supervision of a  
14 licensed pharmacist or by a physician or other person authorized  
15 under state law to dispense the substance;

16 (2) prescribed for a specified human being by a  
17 person authorized under state law to prescribe the substance;

18 and

19 (3) subject to the restrictions on sale  
20 contained in 21 U.S.C.A. 353(b)(1); and

21 U. "prosthetic device" means:

22 (1) orthopedic prosthesis, orthopedic braces  
23 and supports and orthopedic shoes;

24 (2) ocular prosthesis;

25 (3) a prosthesis or prosthetic device ordered

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1 as a result of surgery:

2 (4) crutches and wheelchairs; and

3 (5) replacement parts or related supplies

4 designed specifically for any of the items specified in

5 Paragraphs (1) through (4) of this subsection. "

6 Section 2. A new section of the Gross Receipts and  
7 Compensating Tax Act is enacted to read:

8 "[NEW MATERIAL] DEDUCTION--GROSS RECEIPTS TAX AND  
9 GOVERNMENTAL GROSS RECEIPTS TAX--HEALTH SERVICES--PRESCRIPTION  
10 DRUGS--PROSTHETIC DEVICES.--Receipts from the following may be  
11 deducted from gross receipts:

12 A. the provision of health services;

13 B. sales other than sales for resale of prescription  
14 drugs; and

15 C. sales of prosthetic devices when made by a  
16 licensed practitioner to the user or consumer of the device and  
17 sales of prosthetic devices made by a person on the basis of a  
18 written order issued by a licensed practitioner ordering the  
19 device for a specific individual. "

20 Section 3. REPEAL.--Section 7-2-18.3 NMSA 1978 (being Laws  
21 1994, Chapter 5, Section 17) is repealed.

22 Section 4. APPLICABILITY.--The provisions of Section 3 of  
23 this act apply to taxable years beginning on or after January 1,  
24 1998.

25 Section 5. EFFECTIVE DATE.--The effective date of the

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1 provisions of this act is July 1, 1997.

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